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Google Inc.

9  
10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN JOSE DIVISION**

13 IN RE HIGH-TECH EMPLOYEE  
14 ANTITRUST LITIGATION

Master Docket No. 11-CV-2509-LHK

**ANSWER OF DEFENDANT GOOGLE  
INC. TO PLAINTIFFS'  
CONSOLIDATED AMENDED  
COMPLAINT**

15 THIS DOCUMENT RELATES TO:  
16 ALL ACTIONS  
17

1 Defendant Google Inc. (“Google”) hereby responds to the allegations in the Consolidated  
2 Amended Complaint (“Complaint”) filed by Plaintiffs Michael Devine, Mark Fichtner, Siddharth  
3 Hariharan, Brandon Marshall, and Daniel Stover (collectively “Plaintiffs”) as follows:

4 **I. SUMMARY OF THE ACTION**

5 1. Google admits that Plaintiffs filed this case as a class action against Google and  
6 other defendants but denies the remaining allegations contained in paragraph 1 of Plaintiffs’  
7 Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form  
8 a belief as to the truth of the allegations as they pertain to any other defendant, and on that basis  
9 denies them.

10 2. To the extent that paragraph 2 purports to state a legal conclusion, no answer is  
11 required. Google admits that this purports to be an action seeking damages under the Sherman  
12 Act, the Cartwright Act and the California Business and Professions Code. Google denies the  
13 remaining allegations contained in paragraph 2 of Plaintiffs’ Complaint as they pertain to  
14 Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the  
15 allegations as they pertain to any other defendant, and on that basis denies them.

16 3. To the extent that paragraph 3 purports to state a legal conclusion, no answer is  
17 required. Google admits that the United States Department of Justice (“DOJ”) issued a Civil  
18 Investigative Demand (“CID”) to Google in 2009 and that the DOJ filed a complaint against  
19 Defendants Adobe, Apple, Google, Intel, Intuit and Pixar, which contained the quoted  
20 allegations set forth in paragraph 3 of Plaintiffs’ Complaint. Google denies Plaintiffs’  
21 characterization of the quoted allegations in this paragraph and Plaintiffs’ allegations regarding  
22 conclusions of fact or law made by the DOJ. Google the remaining allegations contained in  
23 paragraph 3 of Plaintiffs’ Complaint as they pertain to Google, including that *per se* treatment is  
24 appropriate in this matter. Google lacks knowledge or information sufficient to form a belief as  
25 to the truth of the allegations as they pertain to any other defendant, and on that basis denies  
26 them.

27 4. Google admits that the DOJ did not seek monetary penalties against Google, but  
28 denies that any employees were harmed by Google’s conduct. Google denies the remaining

1 allegations contained in paragraph 4 of Plaintiffs' Complaint as they pertain to Google. Google  
2 lacks knowledge or information sufficient to form a belief as to the truth of the allegations as  
3 they pertain to any other defendant, and on that basis denies them.

4 **II. JURISDICTION AND VENUE**

5 5. Google admits that this purports to be an action arising under the Sherman Act,  
6 the Cartwright Act and the California Business and Professions Code, but denies that Plaintiffs  
7 are entitled to any relief thereunder.

8 6. To the extent that paragraph 6 purports to state a legal conclusion, no answer is  
9 required. Google otherwise admits the allegations contained in paragraph 6 of Plaintiffs'  
10 Complaint.

11 7. To the extent that paragraph 7 purports to state a legal conclusion, no answer is  
12 required. Google admits that venue is proper. Google lacks knowledge or information sufficient  
13 to form a belief as to the truth of the allegations as they pertain to any other defendant, and on  
14 that basis denies them.

15 8. To the extent that paragraph 8 purports to state a legal conclusion, no answer is  
16 required. Google admits that it is subject to the jurisdiction of this Court for the purposes of this  
17 action. Google lacks knowledge or information sufficient to form a belief as to the truth of the  
18 allegations as they pertain to any other defendant, and on that basis denies them.

19 **III. CHOICE OF LAW**

20 9. To the extent that paragraph 9 purports to state a legal conclusion, no answer is  
21 required. Google otherwise denies the allegations in paragraph 9 of the Complaint.

22 10. Google denies the allegations contained in paragraph 10 of Plaintiffs' Complaint  
23 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
24 to the truth of the allegations as they pertain to any other defendant, and on that basis denies  
25 them.

26 11. Google denies the allegations contained in paragraph 11 of Plaintiffs' Complaint  
27 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
28

1 to the truth of the allegations as they pertain to any other defendant, and on that basis denies  
2 them.

3 12. To the extent that paragraph 12 purports to state a legal conclusion, no answer is  
4 required. Because of the vagueness and ambiguity of Plaintiffs' allegations, Google lacks  
5 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
6 paragraph 12 of Plaintiffs' Complaint, and on that basis denies them.

7 13. To the extent that paragraph 13 purports to state a legal conclusion, no answer is  
8 required. Google does not dispute that venue is proper in the County of Santa Clara with respect  
9 to Plaintiffs but denies that any class is proper in this matter. Google otherwise denies the  
10 allegations contained in paragraph 13 of Plaintiffs' Complaint as they pertain to Google. Google  
11 lacks knowledge or information sufficient to form a belief as to the truth of the allegations as  
12 they pertain to any other defendant, and on that basis denies them.

13 14. To the extent that paragraph 14 purports to state a legal conclusion, no answer is  
14 required. Google otherwise lacks knowledge or information sufficient to form a belief as to the  
15 truth of the allegations contained in paragraph 14 of Plaintiffs' Complaint, and on that basis  
16 denies them.

17 15. To the extent that paragraph 15 purports to state a legal conclusion, no answer is  
18 required. Google otherwise lacks knowledge or information sufficient to form a belief as to the  
19 truth of the allegations contained in paragraph 15 of Plaintiffs' Complaint, and on that basis  
20 denies them.

21 **IV. THE PARTIES**

22 **A. Plaintiffs**

23 16. Google denies that Mr. Devine suffered any injury by reason of the allegations in  
24 the Complaint and otherwise denies the allegations contained in paragraph 16 of Plaintiffs'  
25 Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form  
26 a belief as to the truth of the allegations as they pertain to any other party, and on that basis  
27 denies them.

1           17. Google denies that Mr. Fichtner suffered any injury by reason of the allegations in  
2 the Complaint and otherwise denies the allegations contained in paragraph 17 of Plaintiffs'  
3 Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form  
4 a belief as to the truth of the allegations as they pertain to any other party, and on that basis  
5 denies them.

6           18. Google denies that Mr. Hariharan suffered any injury by reason of the allegations  
7 in the Complaint and otherwise denies the allegations contained in paragraph 18 of Plaintiffs'  
8 Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form  
9 a belief as to the truth of the allegations as they pertain to any other party, and on that basis  
10 denies them.

11           19. Google denies that Mr. Marshall suffered any injury by reason of the allegations  
12 in the Complaint and otherwise denies the allegations contained in paragraph 19 of Plaintiffs'  
13 Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form  
14 a belief as to the truth of the allegations as they pertain to any other party, and on that basis  
15 denies them.

16           20. Google denies that Mr. Stover suffered any injury by reason of the allegations in  
17 the Complaint and otherwise denies the allegations contained in paragraph 20 of Plaintiffs'  
18 Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form  
19 a belief as to the truth of the allegations as they pertain to any other party, and on that basis  
20 denies them.

21           **B. Defendants**

22           21. Google lacks knowledge or information sufficient to form a belief as to the truth  
23 of the allegations contained in paragraph 21 of Plaintiffs' Complaint, and on that basis denies  
24 them.

25           22. Google lacks knowledge or information sufficient to form a belief as to the truth  
26 of the allegations contained in paragraph 22 of Plaintiffs' Complaint, and on that basis denies  
27 them.

1           23. Google admits the allegations contained in paragraph 23 of Plaintiffs' Complaint.

2           24. Google lacks knowledge or information sufficient to form a belief as to the truth  
3 of the allegations contained in paragraph 24 of Plaintiffs' Complaint, and on that basis denies  
4 them.

5           25. Google lacks knowledge or information sufficient to form a belief as to the truth  
6 of the allegations contained in paragraph 25 of Plaintiffs' Complaint, and on that basis denies  
7 them.

8           26. Google lacks knowledge or information sufficient to form a belief as to the truth  
9 of the allegations contained in paragraph 26 of Plaintiffs' Complaint, and on that basis denies  
10 them.

11           27. Google lacks knowledge or information sufficient to form a belief as to the truth  
12 of the allegations contained in paragraph 27 of Plaintiffs' Complaint, and on that basis denies  
13 them.

14           28. Google denies that it participated in any alleged conspiracy or violation of law.  
15 Google lacks knowledge or information sufficient to form a belief as to the truth of the  
16 allegations as they pertain to any other Defendants or unnamed DOES, and on that basis denies  
17 the allegations in paragraph 28.

18           29. Google denies that it participated in any alleged conspiracy or violation of law.  
19 Google lacks knowledge or information sufficient to form a belief as to the truth of the  
20 allegations as they pertain to any other Defendants or unnamed DOES, and on that basis denies  
21 the allegations in paragraph 29.

22 **V. CLASS ACTION ALLEGATIONS**

23           30. To the extent that paragraph 30 purports to state a legal conclusion, no answer is  
24 required. Google admits that Plaintiffs purport to bring this action on behalf of themselves and  
25 others, but otherwise denies the allegations in paragraph 30.

26           31. Google lacks knowledge or information sufficient to form a belief as to the truth  
27 of the allegations contained in paragraph 31 of the Complaint, and on that basis denies them.  
28

1           32. Google denies the allegations contained in paragraph 32 of Plaintiffs' Complaint.

2           33. Google denies the allegations contained in paragraph 33 of Plaintiffs' Complaint.

3           34. Google denies the allegations contained in paragraph 34 of Plaintiffs' Complaint.

4           35. Google denies the allegations contained in paragraph 35 of Plaintiffs' Complaint.

5           36. Google denies the allegations contained in paragraph 36 of Plaintiffs' Complaint.

6           37. Plaintiffs have withdrawn their request for injunctive relief, so no response is  
7 necessary. Google otherwise denies the allegations contained in paragraph 37 of Plaintiffs'  
8 Complaint.

9           38. Google denies the allegations contained in paragraph 38 of Plaintiffs' Complaint.

10 **VI. FACTUAL ALLEGATIONS**

11           39. Google admits that it employed putative Class members in California, and in  
12 some other states, during the Class Period, as the putative Class is defined in Plaintiffs'  
13 Complaint. Google lacks knowledge or information sufficient to form a belief as to the truth of  
14 the remaining allegations as they pertain Google or to any other defendant, and on that basis  
15 denies them.

16           40. Google denies the allegations contained in paragraph 40 of Plaintiffs' Complaint  
17 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
18 to the truth of the allegations as they pertain to any other party, and on that basis denies them.

19           41. Google admits that cold calling is one method it may use to recruit employees, but  
20 denies that it used the definition of cold calling alleged in paragraph 41 of Plaintiffs' Complaint,  
21 and therefore denies the allegations in this paragraph on that basis. Google lacks knowledge or  
22 information sufficient to form a belief as to the truth of the allegations as they pertain to any  
23 other defendant, and on that basis denies them.

24           42. Google denies that it used the definition of cold calling alleged in Plaintiffs'  
25 Complaint and therefore denies the allegations in this paragraph on that basis. Google otherwise  
26 denies the allegations in paragraph 42 as they pertain to Google. Google lacks knowledge or  
27 information sufficient to form a belief as to the truth of the allegations as they pertain to any  
28

1 other defendant, and on that basis denies them.

2 43. Because of the vagueness and ambiguity of Plaintiffs' allegations in paragraph 43  
3 of the Complaint, Google lacks knowledge or information sufficient to form a belief about the  
4 truth of these allegations and on that basis denies them.

5 44. Because of the vagueness and ambiguity of Plaintiffs' allegations relating to  
6 Google's and others' conduct in paragraph 44 of the Complaint, Google lacks knowledge or  
7 information sufficient to form a belief about the truth of these allegations and on that basis denies  
8 them.

9 45. Google admits that cold calling is one method it may use to recruit employees, but  
10 denies that it used the definition of cold calling alleged in Plaintiffs' Complaint, and therefore  
11 denies the allegations in this paragraph on that basis. Google otherwise denies the allegations in  
12 paragraph 45 as they pertain to Google. Google lacks knowledge or information sufficient to  
13 form a belief as to the truth of the allegations as they pertain to any other defendant or third  
14 party, and on that basis denies them.

15 46. Google admits that cold calling is one method it may use to recruit employees, but  
16 denies that it used the definition of cold calling alleged in Plaintiffs' Complaint, and therefore  
17 denies the allegations in this paragraph on that basis. Because of the vagueness and ambiguity of  
18 Plaintiffs' remaining allegations relating to Google's and others' conduct in paragraph 46 of the  
19 Complaint, Google lacks knowledge or information sufficient to form a belief about the truth of  
20 these allegations and on that basis denies them.

21 47. Google lacks knowledge or information sufficient to form a belief about the truth  
22 of the allegations in paragraph 47 of the Complaint and on that basis denies them.

23 48. Because of the vagueness and ambiguity of Plaintiffs' allegations relating to  
24 Google's and others' conduct in paragraph 48 of the Complaint, Google lacks knowledge or  
25 information sufficient to form a belief about the truth of these allegations and on that basis denies  
26 them.

27 49. Because of the vagueness and ambiguity of Plaintiffs' allegations relating to  
28



1 Google's and others' conduct in paragraph 49 of the Complaint, Google lacks knowledge or  
2 information sufficient to form a belief about the truth of these allegations and on that basis denies  
3 them.

4 50. Because of the vagueness and ambiguity of Plaintiffs' allegations relating to  
5 Google's and others' conduct in paragraph 50 of the Complaint, Google lacks knowledge or  
6 information sufficient to form a belief about the truth of these allegations and on that basis denies  
7 them.

8 51. Google denies that the alleged goals accurately or fully reflect Google's goals  
9 with respect to compensation, and on that basis denies the allegations in paragraph 51 of the  
10 Complaint.

11 52. Google denies that the alleged practices in paragraph 52 fully or accurately reflect  
12 Google's compensation practices or that the alleged goals in paragraph 51 fully or accurately  
13 reflect Google's goals with respect to compensation, and on that basis denies the allegations in  
14 paragraph 52 of the Complaint.

15 53. Because of the vagueness and ambiguity of Plaintiffs' allegations relating to  
16 Google's and others' conduct in paragraph 53 of the Complaint, Google lacks knowledge or  
17 information sufficient to form a belief about the truth of these allegations and on that basis denies  
18 them.

19 54. Google denies that it used the definition of cold calling alleged in Plaintiffs'  
20 Complaint, and therefore denies the allegations in this paragraph on that basis. Google denies  
21 the remaining allegations in paragraph 54 of the Complaint as they pertain to Google. Google  
22 lacks knowledge or information sufficient to form a belief as to the truth of the allegations as  
23 they pertain to any other defendant, and on that basis denies them.

24 55. Google denies the allegations contained in paragraph 55 of Plaintiffs' Complaint  
25 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
26 to the truth of the allegations as they pertain to any other party, and on that basis denies them.

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1           56. Google lacks knowledge or information sufficient to form a belief as to the truth  
2 of the allegations contained in paragraph 56 of Plaintiffs' Complaint, and on that basis denies  
3 them.

4           57. Google lacks knowledge or information sufficient to form a belief as to the truth  
5 of the allegations contained in paragraph 57 of Plaintiffs' Complaint, and on that basis denies  
6 them.

7           58. Google lacks knowledge or information sufficient to form a belief as to the truth  
8 of the allegations contained in paragraph 58 of Plaintiffs' Complaint, and on that basis denies  
9 them.

10          59. Google lacks knowledge or information sufficient to form a belief as to the truth  
11 of the allegations contained in paragraph 59 of Plaintiffs' Complaint, and on that basis denies  
12 them.

13          60. Google lacks knowledge or information sufficient to form a belief as to the truth  
14 of the allegations contained in paragraph 60 of Plaintiffs' Complaint, and on that basis denies  
15 them.

16          61. Google lacks knowledge or information sufficient to form a belief as to the truth  
17 of the allegations contained in paragraph 61 of Plaintiffs' Complaint, and on that basis denies  
18 them.

19          62. Google lacks knowledge or information sufficient to form a belief as to the truth  
20 of the allegations contained in paragraph 62 of Plaintiffs' Complaint, and on that basis denies  
21 them.

22          63. Google lacks knowledge or information sufficient to form a belief as to the truth  
23 of the allegations contained in paragraph 63 of Plaintiffs' Complaint, and on that basis denies  
24 them.

25          64. Google lacks knowledge or information sufficient to form a belief as to the truth  
26 of the allegations contained in paragraph 64 of Plaintiffs' Complaint, and on that basis denies  
27 them.

1           65. Google lacks knowledge or information sufficient to form a belief as to the truth  
2 of the allegations contained in paragraph 65 of Plaintiffs' Complaint, and on that basis denies  
3 them.

4           66. Google lacks knowledge or information sufficient to form a belief as to the truth  
5 of the allegations contained in paragraph 66 of Plaintiffs' Complaint, and on that basis denies  
6 them.

7           67. Google lacks knowledge or information sufficient to form a belief as to the truth  
8 of the allegations contained in paragraph 67 of Plaintiffs' Complaint, and on that basis denies  
9 them.

10          68. Google lacks knowledge or information sufficient to form a belief as to the truth  
11 of the allegations contained in paragraph 68 of Plaintiffs' Complaint, and on that basis denies  
12 them.

13          69. Google lacks knowledge or information sufficient to form a belief as to the truth  
14 of the allegations contained in paragraph 69 of Plaintiffs' Complaint, and on that basis denies  
15 them.

16          70. Google lacks knowledge or information sufficient to form a belief as to the truth  
17 of the allegations contained in paragraph 70 of Plaintiffs' Complaint, and on that basis denies  
18 them.

19          71. Google lacks knowledge or information sufficient to form a belief as to the truth  
20 of the allegations contained in paragraph 71 of Plaintiffs' Complaint, and on that basis denies  
21 them.

22          72. Google lacks knowledge or information sufficient to form a belief as to the truth  
23 of the allegations contained in paragraph 72 of Plaintiffs' Complaint, and on that basis denies  
24 them.

25          73. Google lacks knowledge or information sufficient to form a belief as to the truth  
26 of the allegations contained in paragraph 73 of Plaintiffs' Complaint, and on that basis denies  
27 them.

1           74. Google lacks knowledge or information sufficient to form a belief as to the truth  
2 of the allegations contained in paragraph 74 of Plaintiffs' Complaint, and on that basis denies  
3 them.

4           75. Google lacks knowledge or information sufficient to form a belief as to the truth  
5 of the allegations contained in paragraph 75 of Plaintiffs' Complaint, and on that basis denies  
6 them.

7           76. Google lacks knowledge or information sufficient to form a belief as to the truth  
8 of the allegations contained in paragraph 76 of Plaintiffs' Complaint, and on that basis denies  
9 them.

10          77. Google lacks knowledge or information sufficient to form a belief as to the truth  
11 of the allegations contained in paragraph 77 of Plaintiffs' Complaint, and on that basis denies  
12 them.

13          78. Google lacks knowledge or information sufficient to form a belief as to the truth  
14 of the allegations contained in paragraph 78 of Plaintiffs' Complaint, and on that basis denies  
15 them.

16          79. Google admits that Arthur D. Levinson sat on the boards of both Apple and  
17 Google. Google denies that it used the definition of cold calling alleged in Plaintiffs' Complaint,  
18 and therefore denies the allegations related to cold-calling in this paragraph on that basis.  
19 Because of the vagueness and ambiguity of Plaintiffs' allegations that Google and Apple  
20 "expressly agreed" not to cold call each other's employees, Google lacks knowledge or  
21 information sufficient to form a belief about the truth of these allegations and on that basis denies  
22 them. Google denies the remaining allegations in paragraph 79 as they pertain to Google.  
23 Google lacks knowledge or information sufficient to form a belief as to the truth of the  
24 allegations as they pertain to Apple, and on that basis denies them.

25          80. Google denies the allegations in paragraph 80 of Plaintiffs' Complaint.

26          81. Google denies the allegations in paragraph 81 of Plaintiffs' Complaint.

27          82. Google denies the allegations contained in paragraph 82 of Plaintiffs' Complaint  
28

1 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
2 to the truth of the allegations as they pertain to Apple, and on that basis denies them.

3 83. Google denies that it acted to “ensure compliance” with any alleged bilateral  
4 agreement, and denies the allegations in paragraph 83 on that basis. Google denies that it used  
5 the definition of cold calling alleged in Plaintiffs’ Complaint, and therefore denies the allegations  
6 related to cold-calling in this paragraph on that basis. Google does not dispute that venue is  
7 proper in the County of Santa Clara. Google lacks knowledge or information sufficient to form a  
8 belief as to the truth of the allegations as they pertain to Apple, and on that basis denies them.

9 84. Google admits that an Apple employee contacted Google regarding recruitment  
10 efforts by Google and that Google investigated these complaints. Because of the vagueness and  
11 ambiguity of Plaintiffs’ allegations relating to an “express” or “explicit” agreement between  
12 Google and Apple, Google lacks knowledge or information sufficient to form a belief about the  
13 truth of these allegations and on that basis denies them. Google denies the remaining allegations  
14 in paragraph 84 as they pertain to Google. Google lacks knowledge or information sufficient to  
15 form a belief as to the truth of the allegations as they pertain to Apple, and on that basis denies  
16 them.

17 85. Google denies the allegations contained in paragraph 85 of Plaintiffs’ Complaint  
18 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
19 to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

20 86. Google lacks knowledge or information sufficient to form a belief as to the truth  
21 of the allegations contained in paragraph 86 of Plaintiffs’ Complaint, and on that basis denies  
22 them.

23 87. Google lacks knowledge or information sufficient to form a belief as to the truth  
24 of the allegations contained in paragraph 87 of Plaintiffs’ Complaint, and on that basis denies  
25 them.

26 88. Google lacks knowledge or information sufficient to form a belief as to the truth  
27 of the allegations contained in paragraph 88 of the Complaint, and on that basis denies them.

1           89. Google lacks knowledge or information sufficient to form a belief as to the truth  
2 of the allegations contained in paragraph 89 of Plaintiffs' Complaint, and on that basis denies  
3 them.

4           90. Google lacks knowledge or information sufficient to form a belief as to the truth  
5 of the allegations contained in paragraph 90 of Plaintiffs' Complaint, and on that basis denies  
6 them.

7           91. Google lacks knowledge or information sufficient to form a belief as to the truth  
8 of the allegations contained in paragraph 91 of Plaintiffs' Complaint, and on that basis denies  
9 them.

10          92. Google lacks knowledge or information sufficient to form a belief as to the truth  
11 of the allegations contained in paragraph 92 of Plaintiffs' Complaint, and on that basis denies  
12 them.

13          93. Google lacks knowledge or information sufficient to form a belief as to the truth  
14 of the allegations contained in paragraph 93 of Plaintiffs' Complaint, and on that basis denies  
15 them.

16          94. Google lacks knowledge or information sufficient to form a belief as to the truth  
17 of the allegations contained in paragraph 94 of Plaintiffs' Complaint, and on that basis denies  
18 them.

19          95. Google lacks knowledge or information sufficient to form a belief as to the truth  
20 of the allegations contained in paragraph 95 of Plaintiffs' Complaint, and on that basis denies  
21 them.

22          96. Google lacks knowledge or information sufficient to form a belief as to the truth  
23 of the allegations contained in paragraph 96 of Plaintiffs' Complaint, and on that basis denies  
24 them.

25          97. Google admits the allegations contained in paragraph 97 of Plaintiffs' Complaint.

26          98. Google denies that it used the definition of cold calling alleged in Plaintiffs'  
27 Complaint, and therefore denies the allegations related to cold-calling in this paragraph on that  
28

1 basis. Because of the vagueness and ambiguity of Plaintiffs' allegations that Google and Intel  
2 "expressly agreed," not to cold call each other's employees, Google lacks knowledge or  
3 information sufficient to form a belief about the truth of these allegations and on that basis denies  
4 them. Google denies the remaining allegations in paragraph 98 of Plaintiffs' Complaint as they  
5 pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the  
6 truth of the allegations as they pertain to other defendants, and on that basis denies them.

7 99. Google denies the allegations in paragraph 99 of Plaintiffs' Complaint.

8 100. Google denies the allegations in paragraph 100 as they pertain to Google.  
9 Google lacks knowledge or information sufficient to form a belief as to the truth of the  
10 allegations as they pertain to Intel, and on that basis denies them.

11 101. Google does not dispute that venue is proper in the County of Santa Clara.  
12 Google denies that it acted to "ensure compliance" with any alleged bilateral agreement, and  
13 denies the allegations in paragraph 101 on that basis. Google denies that it used the definition of  
14 cold calling alleged in Plaintiffs' Complaint, and therefore denies the allegations related to cold-  
15 calling in this paragraph on that basis. Google lacks knowledge or information sufficient to form  
16 a belief as to the truth of the allegations as they pertain to Intel, and on that basis denies them.

17 102. Because of the vagueness and ambiguity of Plaintiffs' allegations relating to an  
18 "express" or "explicit" agreement between Google and Intel, Google lacks knowledge or  
19 information sufficient to form a belief about the truth of these allegations and on that basis denies  
20 them. Google lacks knowledge or information sufficient to form a belief as to the truth of the  
21 allegations as they pertain to Intel, and on that basis denies them.

22 103. Google admits that as of June 2007, Eric Schmidt sat on Apple's board of  
23 directors and Arthur Levinson sat on the boards of Apple and Google. Google denies the  
24 remaining allegations in paragraph 103 as they pertain to Google. Google lacks knowledge or  
25 information sufficient to form a belief as to the truth of the allegations as they pertain to other  
26 defendants, and on that basis denies them.

27 104. Google denies that it used the definition of cold calling alleged in Plaintiffs'  
28

1 Complaint, and therefore denies the allegations related to cold-calling in this paragraph on that  
2 basis. Because of the vagueness and ambiguity of Plaintiffs' allegations relating to an "explicit  
3 agreement" between Google and Intuit, Google lacks knowledge or information sufficient to  
4 form a belief about the truth of these allegations and on that basis denies them. Google denies  
5 the remaining allegations contained in paragraph 104 of Plaintiffs' Complaint as they pertain to  
6 Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the  
7 allegations as they pertain to Intuit, and on that basis denies them.

8 105. Google denies the allegations in paragraph 105 as they pertain to Google. Google  
9 lacks knowledge or information sufficient to form a belief as to the truth of the allegations as  
10 they pertain to Intuit, and on that basis denies them.

11 106. Google denies that it acted to "ensure compliance" with any alleged bilateral  
12 agreement, and denies the allegations in paragraph 106 on that basis. Google denies that it used  
13 the definition of cold calling alleged in Plaintiffs' Complaint, and therefore denies the allegations  
14 related to cold-calling in this paragraph on that basis. Google lacks knowledge or information  
15 sufficient to form a belief as to the truth of the allegations as they pertain to Intuit, and on that  
16 basis denies them.

17 107. Because of the vagueness and ambiguity of Plaintiffs' allegations relating to an  
18 "express" or "explicit" agreement between Google and Intuit, Google lacks knowledge or  
19 information sufficient to form a belief about the truth of these allegations and on that basis denies  
20 them. Google lacks knowledge or information sufficient to form a belief as to the truth of the  
21 allegations as they pertain to Intuit, and on that basis denies them.

22 108. Google denies the allegations contained in paragraph 108 of Plaintiffs' Complaint  
23 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
24 to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

25 109. Google denies the allegations contained in paragraph 109 of Plaintiffs' Complaint  
26 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
27 to the truth of the allegations as they pertain to other defendants, and on that basis denies them.



1           110. Google denies the allegations contained in paragraph 110 of Plaintiffs' Complaint  
2 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
3 to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

4           111. Google admits that the DOJ issued a CID to Google in 2009 in connection with an  
5 investigation, that Google produced documents to the DOJ in response to that CID. Google  
6 denies the remaining allegations contained in paragraph 111 of Plaintiffs' Complaint as they  
7 pertain to Google. Google lacks knowledge or information sufficient to form a belief as to the  
8 truth of the allegations as they pertain to other defendants, and on that basis denies them.

9           112. Google admits that the DOJ filed a complaint against Defendants Adobe, Apple,  
10 Google, Intel, Intuit and Pixar, which contained the quoted allegations set forth in paragraph 112  
11 of Plaintiffs' Complaint. Google denies the remaining allegations contained in paragraph 112 of  
12 Plaintiffs' Complaint, including the allegations related to factual or legal findings made by the  
13 DOJ.

14           113. Google admits that the DOJ filed a complaint against Defendants Adobe, Apple,  
15 Google, Intel, Intuit and Pixar, which contained the quoted allegations set forth in paragraph 113  
16 of Plaintiffs' Complaint. Google denies the remaining allegations contained in paragraph 113 of  
17 Plaintiffs' Complaint, including the allegations related to factual or legal findings made by the  
18 DOJ.

19           114. Google admits that the DOJ filed a complaint on September 24, 2010 against  
20 Defendants Adobe, Apple, Google, Intel, Intuit and Pixar, alleging that each defendant  
21 participated in at least one agreement in violation of Section One of the Sherman Act and that, in  
22 connection with a settlement with the DOJ, the DOJ filed a stipulated proposed final judgment,  
23 which, for purposes of jurisdiction, contained the quoted language set forth in paragraph 114 of  
24 Plaintiffs' Complaint. Google denies the remaining allegations contained in paragraph 114 of  
25 Plaintiffs' Complaint as they pertain to Google. Google lacks knowledge or information  
26 sufficient to form a belief as to the truth of the allegations as they pertain to other defendants,  
27 and on that basis denies them.



1           123. Google denies the allegations contained in paragraph 123 of Plaintiffs' Complaint  
2 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
3 to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

4           124. Google denies the allegations contained in paragraph 124 of Plaintiffs' Complaint  
5 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
6 to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

7           125. Google denies the allegations contained in paragraph 125 of Plaintiffs' Complaint  
8 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
9 to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

10           126. Google admits that Plaintiffs seek the relief alleged in the Complaint but denies  
11 that Plaintiffs are entitled to any relief. Google denies the remaining allegations contained in  
12 paragraph 126 of Plaintiffs' Complaint as they pertain to Google. Google lacks knowledge or  
13 information sufficient to form a belief as to the truth of the allegations as they pertain to other  
14 defendants, and on that basis denies them.

15                           **SECOND CLAIM FOR RELIEF**

16                   (Violations of the Cartwright Act, Cal. Bus. & Prof. Code §§ 16720, et seq.)

17           127. Google incorporates by reference and re-alleges its responses to paragraphs 1  
18 through 126 as if fully set forth herein.

19           128. Google denies the allegations contained in paragraph 128 of Plaintiffs' Complaint  
20 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
21 to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

22           129. Google denies the allegations contained in paragraph 129 of Plaintiffs' Complaint  
23 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
24 to the truth of the allegations as they pertain to other defendants, and on that basis denies them.

25           130. Google denies the allegations contained in paragraph 130 of Plaintiffs' Complaint  
26 as they pertain to Google. Google lacks knowledge or information sufficient to form a belief as  
27 to the truth of the allegations as they pertain to other defendants, and on that basis denies them.



1 Complaint, and denies that Plaintiffs or any person they purport to represent are entitled to the  
2 judgment and relief requested in this Prayer for Relief.

3 154. This paragraph is part of Plaintiffs' Prayer for Relief and thus requires no  
4 response. Otherwise, Google denies the allegations contained in paragraph 154 of Plaintiffs'  
5 Complaint as they pertain to Google. Google lacks knowledge or information sufficient to form  
6 a belief as to the truth of the allegations as they pertain to other defendants, and on that basis  
7 denies them.

8 155. This paragraph is part of Plaintiffs' Prayer for Relief and thus requires no  
9 response. Otherwise, Google denies the allegations contained in paragraph 155 of Plaintiffs'  
10 Complaint, and denies that Plaintiffs or any person they purport to represent are entitled to the  
11 judgment and relief requested in this Prayer for Relief.

12 156. This paragraph is part of Plaintiffs' Prayer for Relief and thus requires no  
13 response. Otherwise, Google denies the allegations contained in paragraph 156 of Plaintiffs'  
14 Complaint, and denies that Plaintiffs or any person they purport to represent are entitled to the  
15 judgment and relief requested in this Prayer for Relief.

16 157. This paragraph is part of Plaintiffs' Prayer for Relief and thus requires no  
17 response. Otherwise, Google denies the allegations contained in paragraph 157 of Plaintiffs'  
18 Complaint, and denies that Plaintiffs or any person they purport to represent are entitled to the  
19 judgment and relief requested in this Prayer for Relief.

20 158. This paragraph is part of Plaintiffs' Prayer for Relief and thus requires no  
21 response. Otherwise, Google denies the allegations contained in paragraph 158 of Plaintiffs'  
22 Complaint, and denies that Plaintiffs or any person they purport to represent are entitled to the  
23 judgment and relief requested in this Prayer for Relief.

24 159. This paragraph is part of Plaintiffs' Prayer for Relief and thus requires no  
25 response. Otherwise, Google denies the allegations contained in paragraph 159 of Plaintiffs'  
26 Complaint, and denies that Plaintiffs or any person they purport to represent are entitled to the  
27 judgment and relief requested in this Prayer for Relief.



**FIRST AFFIRMATIVE DEFENSE**

(Failure to State a Cause of Action)

1. Plaintiffs' claims are barred, in whole or part, as the Complaint fails to state facts sufficient to constitute a cause of action.

**SECOND AFFIRMATIVE DEFENSE**

(Statutes of Limitation)

2. Plaintiffs' claims are barred, in whole or part, by the applicable statutes of limitation.

**THIRD AFFIRMATIVE DEFENSE**

(Estoppel)

3. Plaintiffs' claims are barred, in whole or part, by the doctrine of estoppel.

**FOURTH AFFIRMATIVE DEFENSE**

(Waiver)

4. Plaintiffs' claims are barred, in whole or part, by the doctrine of waiver.

**FIFTH AFFIRMATIVE DEFENSE**

(Unclean Hands)

5. Plaintiffs' claims are barred, in whole or part, by the doctrine of unclean hands.

**SIXTH AFFIRMATIVE DEFENSE**

(Laches)

6. Plaintiffs' claims are barred, in whole or part, by the doctrine of laches.

**SEVENTH AFFIRMATIVE DEFENSE**

(Failure to Exhaust Contractual Remedies)

7. Plaintiffs' claims are barred, in whole or part, to the extent that any plaintiff failed to exhaust all applicable contractual remedies, including any agreement to arbitrate any disputes.

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**EIGHTH AFFIRMATIVE DEFENSE**

(Standing)

8. Plaintiffs do not have standing to pursue some or all of the claims they purport to assert on behalf of others or a class.

**NINTH AFFIRMATIVE DEFENSE**

(Justification Or Privilege)

9. Google's alleged actions, if done at all, were justified and/or privileged since, at all relevant times herein, defendant acted in accordance with defendant's corporate and administrative policies and with all applicable laws.

**TENTH AFFIRMATIVE DEFENSE**

(Settlement and Release)

10. Plaintiffs' claims are barred, in whole or part, to the extent that any plaintiff executed a settlement and release of such claims.

**ELEVENTH AFFIRMATIVE DEFENSE**

(Failure to Mitigate Damages)

11. Upon information and belief, Google alleges that Plaintiffs and the putative class failed to mitigate their alleged damages at or within a reasonable time after the occurrence of the violations alleged in the Complaint, and to the extent of such failure to mitigate, any damages awarded should be reduced accordingly.

**TWELFTH AFFIRMATIVE DEFENSE**

(Intervening Acts and/or Omissions)

12. Plaintiffs' claims are barred, in whole or part, because injuries alleged were caused in whole or in part by the conduct of third parties for whom Google was not responsible, through forces in the marketplace over which Google had no control, or through acts or omissions on the part of Plaintiffs. In the alternative, any damages which Plaintiffs or the putative class may be entitled to recover against Google must be reduced to

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1 the extent that such damages are attributable to persons or entities other than Google (including,  
2 without limitation, Plaintiffs and the putative class).

3 **THIRTEENTH AFFIRMATIVE DEFENSE**

4 (Comparative Fault or Offset)

5 13. Upon information and belief, Google alleges that all or part of the damages  
6 alleged in the Complaint were caused by the acts and/or omissions of other persons or entities  
7 (including, without limitation, acts and/or omissions of Plaintiffs and the putative class), and for  
8 whose conduct Google is not legally responsible. Therefore, if Plaintiffs or the putative class are  
9 found to be entitled to recover any damages, Google's share thereof must be apportioned or  
10 reduced to the extent that such damages are attributable to persons or entities (including, without  
11 limitation, Plaintiffs and the putative class) other than Google.

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

13 (Legitimate Business Interests)

14 14. Plaintiffs' claims are barred, in whole or part, because any and all of Google's  
15 actions or omissions challenged by Plaintiffs were justified and were carried out in furtherance of  
16 Google's legitimate business interests.

17 **FIFTEENTH AFFIRMATIVE DEFENSE**

18 (Speculative Damages)

19 15. Plaintiffs' claims are barred, in whole or in part, because the alleged damages  
20 sought are too speculative and uncertain.

21 **ADDITIONAL RESPONSE**

22 16. Google currently has insufficient information upon which to form a belief as to  
23 whether it may have additional, as yet unstated, defenses, based upon the allegations in  
24 Plaintiffs' Complaint. Google reserves the right to assert additional defenses in the event  
25 discovery indicates additional defenses are appropriate.

26 17. Google denies that Plaintiffs have been injured in any way by its conduct or that  
27 they are entitled to any of the relief prayed for or alleged elsewhere in the Complaint.

1 WHEREFORE, Google prays:

2 1. That Plaintiffs' Complaint be dismissed with prejudice;

3 2. That Plaintiffs take nothing by reason thereof;

4 3. That judgment be entered in favor of Google;

5 4. That Google be awarded its costs (including any attorneys' fees and expert fees to  
6 the extent permitted by applicable law) incurred in its defense of this action; and

7 5. For such other and further relief as the Court deems just and proper.  
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9 Dated: May 21, 2012

MAYER BROWN LLP

10 By: /s/ Lee H. Rubin  
11 Lee H. Rubin  
12 Attorneys for Defendant  
13 GOOGLE INC.  
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